

Serial No. 10/550,856  
Examiner Julie Ha

**REMARKS**

Claims 1-21 are pending in the application. Applicant has amended claim 3 to delete an informality in the claim; specifically, Applicant has removed a parenthetical reference to a commercial source for one of the claimed active substances. Applicant has corrected a typographical error in claim 20, wherein "or" in the first line of the claim has been replaced with "of." Also, Applicant has amended claim 20 to remove Swiss-type claim language ("the use of") with "the method of." "The use or" with "The method of use." There is no issue of new matter.

In the Office Action, Restriction was required to one of the following allegedly distinct inventions:

Group 1 - claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance has the core sequence DEVD;

Group 2 - claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance has the core sequence DMQD;

Group 3 - claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance has the core sequence DQMD;

Group 4 - claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance has the core sequence LEHD;

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Group 5 - claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance has the core sequence IETD;

Group 6 - claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance has the core sequence ESMD;

Group 7 - claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance has the core sequence IETD;

Group 8 - claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance has the core sequence DEVD;

Group 9 - claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance has the core sequence VAD;

Group 10- claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance has the core sequence LEVD;

Group 11- claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance is a non-peptide inhibitor of caspases;

Group 12- claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance is dominant-negative mutant of a caspase;

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Group 13- claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance is an anti-senseoligonucleotide;

Group 14- claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance is a protein comprising the cellular inhibitors of apoptosis proteins cIAP1, cIAP2, the X-linked inhibitor of apoptosis protein XIAP, antiapoptotic protein Bcl-2 or baculoviral protein p35;

Group 15- claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance is dsRNA oligonucleotide;

Group 16- claims 3-4, drawn to a method for the prophylaxis or therapy of at least one viral disease, comprising administering the active substance is an antibody or antibody fragment specific for a caspase or a fusion protein;

Group 17- claims 5-8, drawn to a combination preparation comprising at least two antiviral active substances, wherein at least one antiviral active substance is selected from the active substances;

Group 18- claims 9-13, drawn to a test system for finding active substances comprising caspase-3;

Group 19- claim 14, drawn to a method for identifying at least one active substance for the prophylaxis or therapy of viral diseases, comprising the following steps: a) bringing at least one test system into contact with at least one potential active substance, and (b) determining the effects on virus multiplication;

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Group 20- claim 15, drawn to a method for preparing a drug for the prophylaxis or therapy of viral disease, comprising the following steps: a) performing a test system, and (b) reacting the active substance(s) with at least one auxiliary and/or additional substance;

Group 21- claims 16-17 and 20, drawn to a method for the prophylaxis or therapy of viral infection comprising an infection with an influenza infection, comprising administering a physiologically effective dose of a pharmaceutical composition, comprising at least one caspase inhibitor, caspase-3 inhibitor;

Group 22- claims 18-19, drawn to a combination preparation comprising at least one caspase inhibitor and another antiviral active substance, which is not a caspase inhibitor, comprising an inhibitor of one or several cellular kinases, and galenic auxiliary and carrier substances, wherein the caspase inhibitor and the further antiviral active substance exist in a mixture or in separate galenic preparations;

Group 23- claim 21, drawn to a method for screening for prospective antiviral active substances, comprising the steps a) to e);

In response, pursuant to 35 U.S.C. 121, Applicant hereby elects the Group 17 claims, Claims 5-8, drawn to a combination preparation comprising at least two antiviral active substances, wherein at least one antiviral active substance is selected from the active substances, for initial prosecution on the merits.

Applicant was further requested under 35 U.S.C. 121 to elect a single species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The species listed in the Office Action are as follows:

Species I: different cellular caspases;

Species II: different antiviral active substances: from claim 3;

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Species III: different antiviral active substance which is not caspase inhibitors from claim 20;

Species IV: Non-peptide inhibitor of caspases;

Species V: Dominant-negative mutant of a caspase;

Species VI: An antisense-oligonucleotide;

Species VII: A protein that acts as caspase inhibitors: CIAP1, cIAP2, XIAP, Bel-2 or p35;

Species VIII: dsRNA oligonucleotide;

Species IX: antibody or antibody fragment;

Species X: Different viral diseases;

Species XI: Different kinase inhibitor;

Species XII: Different antivirally acting substance: 1-adamantamine, a rimantadine; a neuraminidase inhibitor, or nucleoside analog comprising ribavirin;

Species XIII: Different neuraminidase inhibitors;

Species XIV: Different inhibitor of cellular kinases;

Species XV: Different virus infecting the cell;

Species XVI: Different types of cells.

Further, if Group 17 is elected, Applicant is required to elect a single combination preparation for the prophylaxis or therapy, comprising at least two antiviral active substances. Furthermore, "Applicant is required to elect a single disclosed viral infecting [sic] and a single disclosed kinase inhibitor."

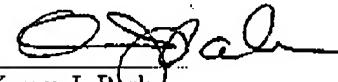
In response, Applicant hereby elects a combination preparation comprising Z-DEVD-FMK and U0126. In addition, Applicant elects Z-DEVD-FMK as a caspase inhibitor and U0126 as kinase inhibitor for further prosecution on the merits. Claims 5-8 are believed to read upon the elected species, claims 5-6 being generic claims. Applicant notes that upon allowance of a generic claim, Applicant will be entitled to consideration of claims to additional species provided by 37 C.F.R. 1.141.

Should the Examiner be of the view that an interview would expedite consideration of the application, request is made that the Examiner telephone the Applicants' attorney at (908) 518-7700, ext. 7 in order that any outstanding issues be resolved.

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The Office is authorized to charge any fees required, to deposit account number 50-1047.

Respectfully submitted,



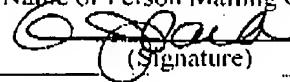
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